

BEFORE THE  
SHORELINES HEARINGS BOARD  
STATE OF WASHINGTON

IN THE MATTER OF A SHORELINE  
SUBSTANTIAL DEVELOPMENT PERMIT  
SOUGHT BY BEACH MINING, INC.,  
UNDER THE ENVIRONMENTAL  
COORDINATION PROCEDURES ACT,  
CHAPTER 90.62, and DENIED BY  
PACIFIC COUNTY,

BEACH MINING, INC.,

Appellant,

v.

PACIFIC COUNTY and STATE  
OF WASHINGTON, DEPARTMENT  
OF FISHERIES,

Respondents.

SHB No. 81-50

ECPA No. 12

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND  
ORDER

This matter, the request for review of a shoreline substantial development permit sought under the Environmental Coordination Procedures Act, 90.62 RCW and denied by Pacific County to Beach Mining, Inc., came on for hearing before the Shorelines Hearings Board; David Akana, Lawrence J. Faulk, Rodney M. Kerslake,

1 Nancy R. Burnett, and Beryl Robison, convened at Lacey, Washington, on  
2 January 31, and February 1, 2, and 3, 1984. Administrative Law Judge  
3 William A. Harrison presided.

4 Appellant appeared by its attorney Keith W. Dearborn. Respondent  
5 Pacific County appeared by Jeff Campiche, Prosecuting Attorney.  
6 Respondent Department of Fisheries appeared by Dennis D. Reynolds,  
7 Assistant Attorney General. Gene Barker and Associates recorded the  
8 proceedings.

9 Witnesses were sworn and testified. Exhibits were examined. From  
10 testimony heard and exhibits examined, the Board makes these

11 FINDINGS OF FACT

12 I

13 This matter arises off shore from Cape Disappointment in Pacific  
14 County. There, at a site approximately a mile from shore, appellant  
15 Beach Mining, Inc., (Beach) proposes to mine "black sand" from the  
16 floor of the Pacific Ocean. On January 21, 1981, Beach applied to  
17 Pacific County for a shoreline substantial development permit.  
18 Pacific County denied the permit on November 17, 1981. Beach  
19 requested review of the denial by this Board. Following several  
20 stipulated continuances and a stipulated remand to Pacific County,  
21 Pacific County reaffirmed its denial of the permit on July 5, 1983.

22 II

23 The black sand which Beach proposes to mine is a composite of  
different minerals including iron, titanium and magnetite. The most  
valuable is titanium, a strategic mineral used in jet engine parts.

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III

As proposed, the black sand would be mined during two years as a pilot project to determine the economic merit of further mining. During times of the year when sea conditions allow, Beach proposes to anchor a barge-mounted clamshell dredge over the site. The clamshell bucket would be lowered to the ocean floor where it would dig up the black sand comprising the floor there. The bucket would then be raised and the contents deposited into a hopper barge at the surface. The dredge and hopper barges would be moved by a buoy tender once every two to three days. Once each week the 6,000-ton hopper barge would be towed by a tugboat into Astoria, Oregon, where the black sand would be deposited for refining.

IV

The off-shore area between the Columbia River and Long Beach, Washington, in which the proposed mining site lies, is one of this state's best commercial crab fishing grounds. From the nearby ports of Ilwaco and Chinook, Washington, in Pacific County there are 34 commercial crab boats which fish the area; other crab boats from Astoria and Warrenton, Oregon, fish there also. Each boat places roughly 350 wire traps, known as crab pots, on the ocean floor. Each pot has a line running from it to a marker buoy at the surface which serves to both locate and allow retrieval of the crab pot. There can be as many as 15,000 to 20,000 crab pots in the general area of the proposed mining site.

The numerous crab pots in the area have created some conflicts

1 between coastal towboat (barge) operators and crab fishermen. The  
2 destruction of crab pots by coastal towboat traffic through the  
3 fishing area has been reduced by informal agreement between the  
4 towboat operators and crab fishermen. The agreement provided for a  
5 towing lane further off shore than the proposed development.

#### 6 V

7 The volume of crabs caught in a season is measured in pounds  
8 landed. About half the pounds of crab landed from Washington's  
9 coastal waters are landed in Pacific County. Washington's annual  
10 coastal crab landings vary widely: 18.5 million pounds in 1970, 4  
11 million pounds in 1975 and 8 million pounds in 1979. Price runs  
12 opposite the volume landed, however. There has been a shift of  
13 Pacific County fishermen away from salmon and into crab fishing in  
14 recent times. About 10 percent of Pacific County's population is  
15 involved in the seafood industry.

#### 16 VI

17 The commercial crab fishing season is December 1 to September 15.  
18 The best crab fishing months in the vicinity of the proposed mining  
19 site are December, April, May, and June.

#### 20 VII

21 Crabs are mobile creatures capable of traveling many miles.  
22 Because of this mobility, the number of crabs at a given site is  
23 virtually impossible to determine from sampling. Therefore, a  
24 "baseline" crab population at the present time cannot be accurately  
25 obtained. When not molting, however, the tendency would be for crabs

1 to leave the site during the proposed mining and recolonize it  
2 afterwards. During the molting season, which can be from May to  
3 October, individual crabs bury themselves in the ocean floor for a  
4 short period of time and remain immobile while developing a new  
5 shell. The use of a clamshell dredge, like that proposed, in Grays  
6 Harbor has indicated that the dredging will probably not cause  
7 significant harm to the molting crab population.

#### 8 VIII

9 Beach has sought and obtained from the State Departments of  
10 Fisheries and Game a hydraulic permit under PCW 75 20.100 for its  
11 mining proposal. That permit excludes mining from November 25 to  
12 April 1 and reserves the right to suspend operations. The permit  
13 requires periodic sampling of the dredge spoils. The Departments  
14 would suspend operations if too many crabs are found in the dredge  
15 spoils.

#### 16 IX

17 The chief potential conflict between Beach's mining proposal and  
18 area crab fishing stems from the possibility that movement of the  
19 hopper barge to and from the mining site could result in entanglement  
20 of the crab pot lines around the tugboat drive shaft or barge tow  
21 lines. This would sever the line or drag away the line and pot,  
22 causing loss of the pot in either event. There is presently no barge  
23 route to the proposed mining site which is not occupied by crab pots  
24 during much of the year.

X

The shore of the Long Beach Peninsula is generally accreting. The base of the peninsula has accreted about 10 feet per year in the past. This is the shore nearest the proposed mining site. The concern of respondent, Pacific County, and the State Parks and Recreation Commission which operates Ft. Canby State Park on the shore southeast of the proposed mining site, is that mining might cause erosion of the shore. The proposed mining is not likely to cause any significant erosion or accretion of the shore. The hole or depression in the ocean floor caused by the mining is likely to be refilled by wave action. This is likely to occur soon after mining operations.

XI

The proposed mining site is shown in Figure 2 of the draft Environmental Impact Statement and is designated by cross-hatching keyed as "Mineral Deposit." This site is no closer than one mile from the adjacent shore. It is approximately one and one-half miles off shore of Ft. Canby State Park. It is approximately three and one-half miles from the Lewis and Clark Interpretive Center. At these distances the mining dredge and barges would not constitute a prominent feature of the view from shore. The aesthetic effect is not likely to be significantly adverse nor significantly deter tourism. The barges would not interfere with small boating.

XII

The proposed mining site is within an area designated as conservancy by the Pacific County Shoreline Master Program (PCSMP).

1 The following provision, Section 19.10 of the PCSMP, applies in this  
2 matter:

3 Mining operations which do not substantially change  
4 the character of the environment are permitted on  
5 conservancy shorelines (Emphasis in original.)

6 XIII

7 The notion of Pacific County denying the shoreline substantial  
8 development permit indicates that the denial was

9 ...based on the findings and conclusions showing that  
10 the proposal seeks to extract a non-renewable  
11 resource in an area where Pacific County's Shoreline  
12 Master Program intended to protect, conserve and  
13 manage existing natural resources in order to ensure  
14 a continuous flow of recreational benefits to the  
15 public and to achieve sustained resource utilization.

16 XIV

17 Any Conclusion of Law which should be deemed a Finding of Fact is  
18 hereby adopted as such.

19 From these Findings the Board comes to these

20 CONCLUSIONS OF LAW

21 I

22 We review the proposed development for consistency with the  
23 applicable (Pacific County) shoreline master program and the  
24 provisions of the Shoreline Management Act (SMA), RCW 90.58.140.

25 II

26 Appellant has shown that its proposed mining development can be  
27 consistent with Section 19.40 of the PCSMP (text in Finding of Fact  
XII, above). The proposed mining development would not substantially  
change the character of the environment provided that the proposal

1 were conditioned as set forth in Conclusion of Law VI, below.

2 III

3 The proposed mining site is within a shoreline of state-wide  
4 significance. RCW 90.58.030(2)(e)(i). The proposed development is  
5 consistent with the preferred use, set forth in RCW 90.58.020(1),  
6 recognizing and protecting state-wide interest over local interest.  
7 This arises from both the strategic importance of the mineral sought  
8 and the probable lack of significant harm to the physical shoreline,  
9 aquatic life, and public enjoyment of the shoreline. This conclusion  
10 is also based upon observance of the conditions set forth in  
11 Conclusion of Law VI, below.

12 IV

13 The chief potential conflict in this matter is between Beach's  
14 proposed barge navigation and crab pots placed by the fishing fleet.  
15 It is indisputable that the subject waters of the Pacific Ocean are  
16 navigable. The public, including appellant, has the right to go where  
17 the navigable waters go. Wilbour v. Gallagher, 77 Wn.2d 306, 315, 462  
18 P.2d 232 (1962). However, fishing is an incidental right of  
19 navigation. Wilbour, supra p. 316. The policy of the SMA  
20 contemplates protecting generally public rights of navigation and  
21 corollary rights incidental thereto. RCW 90.58.020. In applying this  
22 two-sided policy of the SMA we take official notice of the emergence  
23 in tort law of the principle that where both navigation and fishing  
24 can be enjoyed freely and fairly the dominant right, navigation, may  
25 not trespass upon and injure the right of fishing. Van Deusen v.



1 Dunlap Towing Co., 17 Wash. App. 231, 562 P 2d 666 (Div. I, 1977).  
2 Petition for Review denied 89 Wn. 2d 1007 (1977). We conclude that  
3 the policy of the SMA is likewise to prevent navigation from  
4 unnecessarily injuring the right of fishing and, conversely, to  
5 prevent fishing from obstructing navigation unreasonably.

6 V

7 Applying this policy to the case before us, we conclude that  
8 mining and its attendant barge navigation should not occur during the  
9 months of best crab fishing. The evidence shows this period to be  
10 December, April, May, and June (Finding of Fact VI, above). In  
11 conjunction with the closure imposed by the hydraulic permit for the  
12 protection of fish life, any development including mining and barge  
13 navigation should therefore be limited to the period July 1 to  
14 November 25, during two successive years.

15 During the period when barge navigation may occur, it should occur  
16 only in a marked barge lane extending generally south from the  
17 proposed mining site. The lane should be no more than 1,000 feet  
18 wide. Barge movement should occur no more than once per week, and  
19 according to a published schedule. Appellant should be liable to  
20 replace or pay for crab pot loss caused by navigation outside the  
21 channel.

22 VI

23 A shoreline substantial development permit should be issued to the  
24 appellant with the following nine conditions which are necessary to  
25 conform the proposed development to the PCSMP and SMA. Each condition

1 is supported by the testimony and exhibits presented to the Board.  
2 Appellant has stipulated to conditions number 2 through 9. The nine  
3 conditions are:

4 1. Any development including mining and attendant barge  
5 navigation shall only occur during the period July 1 to November 25  
6 for two successive years.

7 2. Barge navigation shall only occur within a lane extending  
8 generally south from the mining site which lane shall be no greater  
9 than 1,000 feet in width and marked by buoys set and collected by the  
10 applicant (Beach Mining, Inc.).

11 3. Barge navigation shall occur no more than once per week.

12 4. Barge navigation shall only occur according to a schedule that  
13 shall be printed and distributed, in advance, to fishermen in the area

14 5. The applicant shall agree to be liable for the cost or  
15 replacement of crab pots lost due to its navigation outside the marked  
16 lane provided in condition No. 2, above.

17 6. The applicant shall stockpile crab pots so that it can satisfy  
18 the liability in condition No. 5, above, by payment in kind.

19 7. The applicant shall monitor the shoreline of the Long Beach  
20 Peninsula at the points designated on Figure 4a of Exhibit A-19 in  
21 this proceeding before the Board (SHB No. 81-50). Such monitoring  
22 shall occur during appropriate periods before, during, and after the  
23 mining operations. All data shall be available to public agencies.  
24 The applicant shall reduce the rate of mining if significant beach  
25 erosion occurs unless the applicant can show that such erosion is not

1 caused or accelerated by its mining operations.

2 8. The applicant shall monitor the effect of its mining upon  
3 marine life and report directly to the Departments of Fisheries and  
4 Game.

5 9. The mining site shall be the area designated in Figure 2 of  
6 the draft Environmental Impact Statement by cross-hatching and keyed  
7 as "Mineral Deposit."

8 VII

9 Any Finding of Fact which should be deemed a Conclusion of Law is  
10 hereby adopted as such.

11 From these Conclusions of Law the Board enters this  
12

ORDER

This matter is remanded to the respondent, Pacific County, with instructions to issue a substantial development permit with the nine conditions set out in Conclusion of Law VI.

DONE at Lacey, Washington, this 30<sup>th</sup> day of March, 1984.

SHORELINES HEARINGS BOARD

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